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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* CLIFTON LIND, BRENDAN O'CONNOR, GARY L. LOEBIG,  
ROBERT LANNERT, JOSEPH R. ENZMINGER, and  
JEFFERSON C. LIND

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Appeal 2009-004385  
Application 10/643,189  
Technology Center 3700

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Before: WILLIAM F. PATE III, STEFAN STAICOVICI, and  
KEN B. BARRETT, *Administrative Patent Judges.*

PATE III, *Administrative Patent Judge.*

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

## STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 25-42. App. Br. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

The claims are directed to a dynamically configurable gaming system. Claims 25 and 32, reproduced below, is illustrative of the claimed subject matter:

25. A gaming system including:

- (a) a gaming machine including a game presentation arrangement capable of producing a respective game presentation for any one of a number of different games;
- (b) a player detecting arrangement separate from the gaming machine for detecting a player as the player traverses a gaming facility and approaches an area of the gaming facility in which the gaming machine is located;
- (c) a player data collection arrangement for storing player preference information for the player;
- (d) a system configuration arrangement for producing a system configuration command specifying a game presentation likely to be favored by the player based on the player preference information for the detected player; and
- (e) a game modification controller in communication with the system configuration arrangement and with the gaming machine, the game modification controller for receiving the system configuration command from the system configuration arrangement and for communicating presentation switching instructions to the gaming machine, the presentation switching instructions causing the gaming machine to switch from a first game presentation to the game presentation likely to be favored by the player prior to an arrival of the player at the gaming machine.

32. A gaming system including:

- (a) a gaming machine including a game presentation arrangement capable of producing a respective game presentation for any one of a number of different games, the gaming machine being located in a hotel room;
- (b) a player data collection arrangement for detecting that a person has been assigned to the hotel room in which the gaming machine is located and for storing player preference information for the person assigned to the hotel room;
- (c) a system configuration arrangement for producing a system configuration command based on the player preference information for the person assigned to the hotel room; and
- (d) a game modification controller in communication with the system configuration arrangement and with the gaming machine, the game modification controller for responding to the system configuration command by communicating presentation switching instructions to the gaming machine, the presentation switching instructions causing the gaming machine to produce a game presentation specified by the presentation switching instructions.

#### REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Sizer	US 5,923,252	Jul. 13, 1999
Rothschild	US 2004/0166940 A1	Aug. 26, 2004

#### REJECTIONS

Claims 32, 33, 39, 40 and 42 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Rothschild. Ans. 3.

Claims 25-31, 34-38 and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rothschild and Sizer. Ans. 4.

## SUMMARY OF APPELLANTS' ARGUMENTS

Appellants contend that the Examiner erred by rejecting claims 32, 33, 39, 40 and 42 under 35 U.S.C. § 102(e) as being anticipated by Rothschild. App. Br. 8-14; Reply Br. 2-5.

Specifically, with respect to claim 32, Appellants contend Rothschild fails to disclose a gaming machine located in a hotel room (App. Br. 9), a player detecting arrangement for detecting that a person has been assigned to a given hotel room in which a given gaming machine is located (App. Br. 9-10), a system configuration arrangement for producing a system configuration command based on player preference information for a particular person that has been assigned to a particular hotel room in which a specific gaming machine is located (App. Br. 10-11), or a game modification controller that responds to the system configuration command by communicating presentation switching instructions to the gaming machine in the hotel room (App. Br. 11-12).

With respect to claim 39, Appellants contend that Rothschild fails to disclose detecting that a player has been assigned to a hotel room in which a gaming machine is located, retrieving stored player preference information for the particular player that has been assigned to a hotel room in which the gaming machine is located, or producing a system configuration command for this player. App. Br. 13.

With respect to claim 42, Appellants contend that Rothschild fails to disclose code executable for retrieving game preference information on a player that has been assigned to a hotel room in which a gaming machine is located or code for responding to a system configuration command by changing the game at a game machine located in a hotel room. App. Br. 13-14.

Appellants additionally contend that the Examiner erred by rejecting claims 25-31, 34-38, and 41 under 35 U.S.C. § 103(a) as being unpatentable over Rothschild and Sizer. App. Br. 14-17; Reply Br. 6-8. Appellants do not dispute the Examiner’s finding that Rothschild teaches the basic structure of independent claims 25, 34 and 41 but lacks any element for switching the game presentation at the gaming machine prior to an arrival of the player at the gaming machine. App. Br. 14-15. Appellants disagree with the Examiner that Sizer makes up for this deficiency of Rothschild, because Sizer only provides an advertising message and does not switch a game presentation prior to arrival of a player at a gaming machine. App. Br. 15-17.

#### FINDINGS OF FACT

1. Rothschild discloses a system for integrating casino gaming with non-casino interactive gaming. The system includes gaming machines 12 in a casino, and computing devices 14, either of which may be employed to conduct wagering games. P. 1, para. [0011], Fig. 1. Each device, 12 and 14, has a video display (a “gaming machine including a game presentation arrangement”). P. 2, para. [0014], Fig. 1.
2. Rothschild discloses issuing players an identification card (a “player detecting arrangement”), such as a magnetic or smart card that uniquely identifies players. P. 4, para. [0030].
3. Rothschild discloses that a player account database 40f (a “player data collection arrangement”) stores data associated with the player such as game preference variables such as preferred game titles, categories or themes. P. 4, paras. [0030] – [0031].
4. Rothschild discloses that a trend analysis computer 36 analyzes the data collected in the various databases 40a-g in order to configure the gaming

network in a manner that maintains the interest of players and/or maximizes the performance and profitability of the machines. The configuration commands may involve the selection of what games are downloaded to specific machines or locations (a “switching instruction”). The configuration command may also change themes to be in a position adjacent to a known player, or suggest games to a player. P. 5, para. [0035].

5. Rothschild does not disclose detecting a player as a player traverses a gaming facility and approaches an area of the gaming facility in which the gaming machine is located and instructions causing switching game presentations to a game likely to be favored by the player prior to the player’s arrival at the gaming machine.
6. Sizer teaches a message delivery device comprising a detection means, such as smart cards or RF cards, for detecting the presence of a person proximate a predetermined object or at a predetermined location which may be at various distances from the device. A primary goal of Sizer is the ability to distinguish between people in order to determine whether a message should be delivered to the detected person based upon stored or detected information about that person and the likelihood of the message to generate sales. If Sizer’s device determines that the message should be delivered to that particular person then Sizer’s device delivers the message. Col. 1, ll. 5-39, 56-60; col. 2, ll. 30-39; col. 6, ll. 4-15, 32-47.
7. Sizer is particularly, but not exclusively, concerned with delivering advertising or marketing messages. Col. 1, ll. 5-10; col. 5, ll. 9-30.

## ANALYSIS

Regarding the rejection of claims 32, 33, 39, 40 and 42 as being anticipated by Rothschild, we agree with Appellants that the mere reference to a “hotel/casino database 40c” and a “computing device 14” that “may be used in a hotel room” does not disclose a system including “a data collection arrangement for detecting that a person has been assigned to [a] hotel room in which the gaming machine is located” in combination with “a controller...communicating presentation switching instructions to the gaming machine” in response to “a system configuration command based on the player preference information for the person assigned to the hotel room” as recited in independent claim 32. Reply Br. 3-4; Ans. 3-4, 7-12 *citing* Rothschild 4-5, paras. [0022], [0028], [0031] – [0033].

Claims 39 and 42 recite a method and program stored on a computer readable medium, respectively, containing similar limitations. For the same reason we agree with Appellants that the Examiner has also failed to establish that Rothschild discloses the method or program. Reply Br. 5. The Examiner’s reproduction of sections of Rothschild does not make apparent how Rothschild meets the specific language of the claim. Thus, the Examiner failed to satisfy the Examiner’s burden of showing anticipation under 35 U.S.C. § 102(e). We are therefore constrained to reverse the rejection of claims 32, 33, 39, 40 and 42 as being anticipated by Rothschild.

We turn to the rejection of claims 25-31, 34-38 and 41 under 35 U.S.C. § 103(a) as being unpatentable over Rothschild and Sizer. Incorporating the detecting, determining and delivering methods and components of Sizer’s message delivery system (*see* Fact 6) into the gaming system of Rothschild (*see* Facts 1-4) would have the predictable result of

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delivering a game to a gaming machine that would be likely to interest a target person near that machine and thereby generate revenue. This modification amounts to the use of Sizer's known techniques to improve Rothschild's known device in a predictable way and therefore would have been obvious to one having ordinary skill in the art. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 416-418 (2007).

Appellants' argument that the Examiner's proposed combination would not have rendered claims 25, 34 and 41 obvious because Sizer does not suggest switching a game presentation (App. Br. 15; Reply Br. 6-7) is unpersuasive. Rothschild already discloses switching a game in response to a person at a particular machine. Fact 4. Sizer does not also need to disclose this in order to render the claims obvious based upon a combination of Rothschild and Sizer. The fact that the content delivered in Sizer, an advertising message, differs from the content delivered in Rothschild, does not mean that one of ordinary skill in the art would not have recognized the advantages of combining features and techniques described by Sizer into the device of Rothschild. Incorporating the *teachings* of Sizer into Rothschild does not mandate incorporation of Sizer's specific structures, such as the advertising message. See *In re Nievelt*, 482 F.2d 965, 968 (CCPA 1973). Furthermore, Sizer expressly suggests other uses. Fact 7. Appellants' argument that Sizer does not detect and deliver "prior" to arrival (App. Br. 16-17; Reply Br. 7) is unpersuasive because it is based upon an inaccurate reading of Sizer. Sizer suggests detecting, determining and delivering when the target person is at an object or location that may be at a distance from where the machine is located and not necessarily at the machine itself. Fact 6. For these reasons, the Examiner's rejection of claims 25-31, 34-38, and 41

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under 35 U.S.C. § 103(a) as being unpatentable over Rothschild and Sizer is sustained.

## DECISION

The Examiner's rejection of claims 32, 33, 39, 40 and 42 is reversed.

The Examiner's rejection of claims 25-31, 34-38, and 41 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136. *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

## AFFIRMED-IN-PART

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